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CASE and COMMENT

Autumn 1935

VOLUME 41 No. 3

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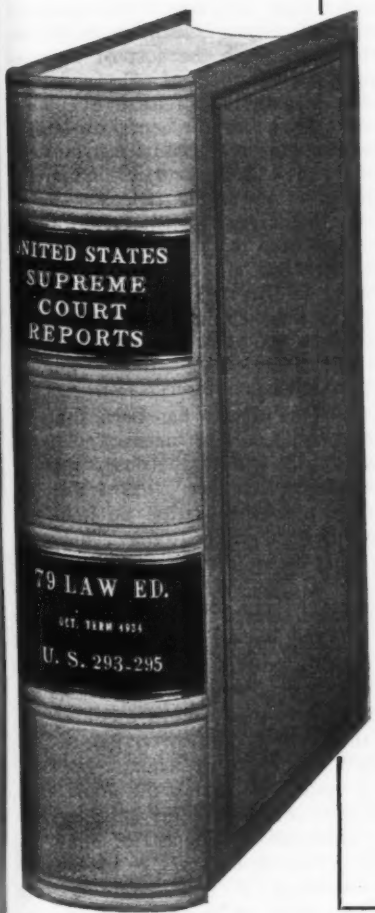

The Gold Clause Cases
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Hamilton v. Univ. of Cal.

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"Reversible Error"

By John H. Wigmore, Professor, Northwestern University

(Reprinted from 19 Journal of American Judicature Society 28 (June 1935)

WHEN a ruling is made by the trial court, and one of the parties has excepted to it, and the verdict has been adverse to him, and he applies to the appellate tribunal for review, and that tribunal pronounces the trial court's ruling to be erroneous under the rules of evidence, what action shall be taken by the appellate tribunal in consequence of the error?

1. Inasmuch as the general purpose of the rules of evidence is merely to serve as a means to an end, viz., the correct ascertainment of the facts in litigation, the natural action for the appellate tribunal would be to scrutinize the entire record of the evidence in the case, to determine whether without the erroneously admitted evidence or with the erroneously excluded evidence the verdict should nevertheless have been the same as actually rendered; if yes, the judgment should be affirmed; if no, the verdict should be set aside. This solution would seem to be the only one consistent with a rational and efficient system of appellate review in the administration of justice.

(1) Such was indeed once the accepted principle, and in the original home of the common law such it still is. But that principle has for a long time suffered an eclipse in almost all jurisdictions of the United States. A different rule now prevails, with various shades of intensity, and with more or less inconstancy of application at times, in the great majority of supreme courts. This rule is: That *an erroneous ruling on evidence by the trial court entitles the excepting party automatically to a new trial,* regardless of the correctness of the verdict. The expression "reversible error," used by many courts, is the catchword of this rule, i. e., the error per se requires a reversal.

2. As to the *practical* consequences of this rule, they are obvious to all. Increase in the delay and expense of litigation, unfair advantage to parties who can endure the cost of repeated appeals, fostering of the spirit of litigious gambling, release of plainly guilty lynch law for court law—to all these defects in the administration of justice the rule of reversible error contributes a lamentable part.

As to the *theory* or *reason* for this rule, on what basis does it stand? Its modern existence (temporary, no doubt) in the United States jurisdictions has a complex explanation; for there are several causes, some resting in legal theory, some due to general professional conditions.

(1) One theory has been that the party (especially an accused) "has a clear *legal right* to the observance of the rules of evidence." As to this, the sufficient answer is that no man can have a legal right to have his case wrongly decided.

(2) Another theory is that for the appellate tribunal to review the merits of the entire evidence would be to "usurp the province of the jury." As to this, it may be said that an essential part of jury trial always was and still is the control and correction of the jury's verdict by the court. So that, in a system by which the court may refuse to send to the jury a case lacking substantial evidence, or may set aside a verdict contrary to the weight of evidence, it could not by any straight thinking be deemed a usurpation of the jury's powers to confirm a

verdict that is supported by ample evidence.

(3) Another theory is the extraordinary one that a trial in court consists in "playing the game," or is analogous to "a struggle of war;" so that (in the language of a modern Irish judge) "the object of our jurisprudence is *not to get at the truth and fact in each case;* it is to get at the truth and fact in accordance with settled rules regulating evidence." This theory (so it happens) has been found germane to the spirit of the bar in our country. It has ceased to be a mere theory, and has become a professional state of mind, for many practitioners and judges at least. The historical and social causes are deep-seated and complex; but at any rate the fact is there. And it forms one of the obstacles to any change of rule by mere legislative fiat.

(4) A fourth practical reason is the lack of a *complete transcript of the evidence* (in the usual practice) when the record of a trial is submitted to the appellate tribunal. How can that tribunal determine the total effect of the evidence, without having all the evidence before it? This difficulty could be obviated, with the modern arrival of stenographic service. In criminal trials, especially, where the rule in question is most baneful in its consequences, the practice of the military courts should long ago have been adopted, viz., of taking, by rule of court, and as an invariable routine, a complete stenographic report of every felony trial and supplying one transcript to each party and to the reviewing tribunal.

(5) A final reason for the present rule is the generally *inferior status of the trial courts,* and the consequent lack of confidence by the bar in the rulings of trial judges. This has led inevitably to a justifiable urge by the bar for appellate review, and to a demonstrated necessity for strict and constant correction of these trial courts' errors. Until this condition has improved, the bar will hardly be disposed to abandon the present rule, in spite of all its irrationality and inefficiency.

3. Legislatures, moved by public opinion or by progressive leaders of the bar, have in many states sought to restore the orthodox principle. A frequent form of statute reads: "There shall be no reversal for error of ruling at the trial unless after an examination of the entire case it appears that the error complained of has resulted in a miscarriage of justice." But this indefinite phrase "miscarriage of justice" has usually availed little to change the actual practice of appellate tribunals. The reversals have continued with almost the same technical automatism. The habits of thought typified in the above-named reasons have been too powerful to be overcome by a mere legislative form of words. And they will continue to be so, in great degree, during the dominance of a generation of practitioners and judges brought up under the present rule. Only the coming generation can be looked to for removing the blight of that rule.

But, though the present prevalence of the rule can readily be explained, and though some day the influences that maintain it may cease to operate, meanwhile the fact remains that the phrase "reversible error" is one of deep disgrace to the American judiciary system. It stultifies the court that uses it; for it labels as senseless mechanized robots the incumbents of a high office whose function presupposes in every cause the conscious exercise of mature wisdom and intelligent justice.

Defamation via Radio

By Dean James Emmet Royce, Gonzaga University, Extracts from 1 Law Journal of Student Bar Association, Ohio State University 180 (May 1935)

SCIENCE seems to have a most embarrassing way of upsetting what have long been recognized as firmly established principles of law.

Substantive rules, as old as English jurisprudence, find themselves unceremoniously jostled out of place by modern invention. The result is sleepless nights for hapless jurists, confusion for those who write and publish textbooks, brain-fag for the student and utter despair for those burdened with the duty of expounding in the classroom what is the law of the land.

And now long-crystallized conceptions of the law of defamation seem headed for the discard because of scientific progress.

It was bad enough when the introduction of stenography and typing raised the question whether the dictator made a publication to the amanuensis who set down pothooks in her notebook and pounded them out on her keyboard or whether a privilege existed between the secretary and her employer.

And now we have the question as to how shall be classified the utterances of one who wounds the feelings of his fellow man by what he speaks into the omnipresent microphone.

Is it libel, or is it slander?

Shall it be visited with the strict responsibility of him who writes awry in his widely-circulated newspaper for all the world to see, or may it escape with the comparatively meager penalty of him who gossips in the corner grocery store?

With this problem the courts are being called upon to wrack their brains, and over it none-too-profound state legislatures are mulling.

The prevailing mode of considering the wrong or defamation is, we assume, to view it as a single tort, which may be committed by two different means. It is an injury to the reputation of another, caused by two different instrumentalities. When one of these instruments is used, the injury is presumed to be greater and the penalty is more severe. It is as if we said that an injury to the body may be caused either by gunshot or by sticks and stones. One naturally concludes a distinction in the degree of harm and the consequent legal liability between them.

The two means by which one's character may be defamed and his reputation injured we call respectively libel and slander.

Just how to draw the line between them has caused a bit of bother. Some authorities have approached the problem subjectively, others objectively. The subjectivists have attempted to enumerate the various means by which defamatory matter could be communicated—by speaking, by singing, by playing a melody, by whistling a tune, in the case of slander; by writing, by printing, by caricature, by hanging in effigy, in the case of libel. The very effort to enumerate has created its own difficulty, for, no sooner did one feel that his list was complete, than somebody would suggest still another means.

The objectivists, on the other hand, have selected the senses of the recipient, upon which the publication was registered. If it reached the hearing, it was slander; if the sense of sight, it was libel.

Which was all very well, we might digress to observe, until along came the talking movie, which registered upon both senses in the same fell swoop.

The importance of being able to determine in which class a particular utterance falls is, of course, obvious to the most casual student of the subject. Primarily it has to do with the difference between those publications which are actionable per se if uttered so as to constitute slander—and thus relieve the plaintiff of the necessity of proving he has been pecuniarily damaged—and those which are so actionable as libel.

The "per se" list in libel being most comfortingly broader than in slander, it is, of course, tremendously to the advantage of the aggrieved in a large number of cases to have his troubles recognized in the former class.

The reasons for the differences are also in the A-B-C of every Freshman. They are three:

First, libelous utterances (in the simplest classification, those reduced to "black and white") are presumed to be the result of greater deliberation, and hence of greater malice;

Second, they are supposed to reach a larger number of people who might thus hold the plaintiff in disesteem, and,

Third, they are credited with greater permanency, and thus a more lasting hurt.

Judged by these standards—as old as the Common Law—shall we then say that defamatory utterances over the ether are libel, or are they slander?

At least two courts, and a number of legislatures—although perhaps without giving too much thought to the measuring sticks we have just set down—have deliberately put them in the former class.

Judged first, if you please, by the standard of antecedent deliberation, what right has anyone to conclusively presume that an utterance through a microphone has been set down and pondered over more than one spoken without the intervention of that pesky little device? True, most radio speeches are delivered from prepared manuscript, lay the manuscript aside at any time in favor of the dynamic inspirations of the moment. But so also (worse luck) are most of the other speeches one must listen to these days, painfully watching the orator turn his pages one by one and hoping against hope that he will skip a couple.

Secondly, does the fact that one's words go trippingly out upon the ether from the spiderlike web of a broadcasting station necessarily infer the existence of a large and eager audience sitting breathless to drink them in? A thousand times no. Not while turning a dial is no more laborious than brushing off an unwelcome fly. What a blow to one's pride it might be if he could only know the number of switches that go "snap" almost before he has gotten any further than "Dear Friends of the Radio Audience." Rather than presuming wide reception for political emissions from every little one-horse radio station, why not give the benefit of the doubt, if any, to the audience of a thousand—or five, ten, or a hundred thousand—wedged into an amphitheater whence it is none to easy to extricate oneself in the event that the speech being made is not to one's liking?

And, as for the test of permanency, surely there is no more in the case of radio speeches than of any other kind. Even less—if we may take the word of scientists who say that ether waves travel so much faster than sound waves that a radio program gets to the receiving set (and is heard and most likely forgotten) before it reaches persons actually in the room where it is broadcast.

By what logic, or what authority (historically legal or otherwise) are we then to say that radio talks are libel and un-radio talks are not? If the distinction will not stand the test of norms eight centuries old, what basis

is there for it? In all fairness, we should be supplied with some new standards before the old ones are so ruthlessly snatched from us.

Courts or no courts, therefore—legislatures or no legislatures—we unblushingly proclaim our continued opinion that defamation on the ether differs no whit from that without it.

But, just in closing, may we have the boldness to ask our friends of bench and legislative hall to solve one problem:

How would you wish us to classify a defamatory utterance delivered to a present audience in a public hall and simultaneously broadcast over Station XYZ?

Recollections of Mr. Justice Holmes

By Professor Augustin Derby, New York University School of Law, Condensation from 12 N. Y. University Law Quarterly Review 345 (March 1935)

My first impression of Justice Holmes is still vivid; erect and lean, a mass of gray hair, and gray military moustache, keen piercing but very kindly eyes, as handsome a man as I have known. Gutzon Borglum, the well known sculptor who took the death mask, is reported in the press to have said that the features were as fine as any he had ever seen in Greek, Roman or Anglo-Saxon sculpture.

I had supposed when I received my appointment that I was to be officially a private secretary. However, when my first salary check came, I found that my real classification on the payroll of the Department of Justice was that of stenographic clerk of the United States Supreme Court. I fear that my compensation was obtained, after that at least, by misrepresentation, for I was no stenographer, nor could I operate a typewriter. Had I been able to type, I should have had to bring the machine into the house over the Justice's dead body, or by stealth. A later secretary smuggled in one, concealing it for a few days, but when discovered it was promptly ejected. All the Justice's opinions and correspondence were in longhand, and the reports of his secretaries were required also to be written out.

His program of work in my time with him was this: On Saturday mornings, when the court was in session, the Justices held conference, and voted on the cases in which they were all prepared by hearing argument and reading the briefs. Late on Saturday afternoon the Chief Justice (then Chief Justice Fuller) would allot the opinions to be written by each Justice, and his messenger would deliver to the home of each Justice his allotment, which usually meant for Mr. Justice Holmes either one or two opinions, depending on the importance of the case, to be written each week. For him it was two opinions more often than one. The messenger of the Chief Justice would arrive between four and five o'clock in the afternoon with the allotment.

The Justice seemed, already, to have his opinion clearly in mind. Generally he would sit down at his desk and begin writing in longhand. Of course the briefs and records were before him. He would work until it was time

to dress for dinner, if he were going out, for he and Mrs. Holmes were very much in demand, and dined out frequently. The Justice, like his father, was a brilliant conversationalist, and thoroughly enjoyed his social contacts. If not dining out he might work on Saturday evenings. By the time he started to court (the court met at twelve and sat until four-thirty with a half hour out for lunch) on Tuesday morning, he usually had completed the draft of one opinion. By the following Saturday he had completed his second opinion if there was a second. The opinions went to the public printer, and when returned were sent to the other Justices for criticism, then were put in final form. He believed greatly in short opinions. To cite previous decisions of the court by volume and page was correct, to quote the language of the court in those decisions, which could easily be looked up from his reference, was "padding." His opinions were closely reasoned and condensed, requiring careful study for understanding. "I am writing for the expert," he said to me. The style was unique, and the choice of words considered with greatest care.

The secretary read briefs, motion papers, petitions for certiorari, and reported on them. Perhaps he thought that he had given legal assistance; but the Justice read all the briefs and papers himself, and wrote his own opinions. He never asked me to find the law. He knew the law, at least as he believed it was or should be. He did direct me to find authorities to support a proposition in an opinion, but never asked me to find out whether the proposition was the law. He, alone of the Justices of the Supreme Court, called for the Year Books from the Supreme Court Library. He alluded in his opinions to other systems of law. Once I spent many hours under his direction examining the Canon Law to find the origin of the "Purgatory Oath," (juramentum purgatorium) to which he referred in his opinion in the Chattanooga Lynching case, where the Sheriff of Hamilton County, Tennessee, and others were held for trial by the Supreme Court on a charge of contempt, for aiding and abetting the jail delivery of a prisoner convicted of rape in a state court, and murdered by a mob, after an appeal had been allowed by a Justice of the Supreme Court from the United States Circuit Court's denial of a writ of habeas corpus.

The Justice had a fine library in his home, and most of the secretary's work could be done there. He loved his books. Once I had taken a book from the shelves, and to read it better, flattened it out on my desk. He happened to see. "Young man," he said, "do not brutalize my book." I have never forgotten that admonition.

He once discussed with me the men whom he considered the six greatest judges who had sat on the Supreme Court. I remember four, Marshall, Story, Bradley and Field. Can there be any doubt that he ranks high among them? For the most part he had small use for textbooks. One exception was "Wigmore on Evidence," for which he had great admiration.

He was a prodigious reader. From 1881 to the time of his last illness he kept a complete record, most of it in his own hand, of the books he had read. The entries are in minute handwriting, and cover a large part of nearly two hundred pages of a fair sized copy book. In my days with him he enjoyed the theatre. He spoke to me of the deep impression left upon him by David Warfield's acting in "The Music Master." Warfield could, he said, draw tears by his presence and gestures, without a spoken word.

The Justice's appointment came from President Theodore Roosevelt. After his dissenting opinion in the

Northern Securities case, in which the President was deeply interested, it is well known that for a time he was in disfavor at the White House. But later on the President forgot this grievance, and sent the Justice a fine appreciation of a volume of addresses made before he went on the Supreme Court. He had an almost inflexible rule against delivering addresses while the court was in session, from which I can recall only two departures. He spoke once to the Harvard Law Alumni in New York, and on March 8th, 1931, when his ninetieth birthday was celebrated with a coast to coast radio broadcast, he spoke for a few minutes from his library. This brief address is unquestionably a classic in the English language. He said:

"In this symposium my part is only to sit in silence. To express one's feelings as the end draws near is too intimate a task. But I may mention one thought that comes to me as a listener in. The riders in a race do not stop short when they reach the goal. There is a little finishing canter before coming to a standstill. There is time to hear the kind voice of friends and to say to oneself the work is done.

"But just as one says that, the answer comes, the race is over, but the work never is done while the power to work remains.

"The canter that brings you to a standstill need not be only coming to rest. It cannot be, while you still live. For to live is to function. That is all there is in living.

"And so I end with a line from a Latin poet who uttered the message more than fifteen hundred years ago:

" 'Death plucks my ear and says, Live—I am coming.' "

Remarks on Moving the Admission of a Class of Candidates for the Bar

By Charles P. Megan of Illinois Bar (Reprinted from 12 Dicta 135, April 1935)

MAY it please the Court: I have the honor of moving the admission of these young men and young women to the bar of Illinois.

This is the first step in the process by which older lawyers turn over to the new generation the profession of which we are trustees for them, and they now for *their* successors. As fathers see their sons coming upon the field of battle, full-armed, eager for the fray, there is an agony of desire to help the young men in some great way, to pass on the wisdom of the ages, to make the fight less terrible, the outcome more sure, to give the sons what their fathers never had—security, a place in the sun, a key to the maze, opportunity without fear, a roll of honor with no casualty list, the palm of victory without the dust. We know this cannot be done, and it is better so; the young men would not thank us for a life without conflict; when all is over, they will have "lived and worked with men;" their lives will have been spent

in the finest fellowship on earth, doing the most important things in the world, lives rich and full and dangerous, the lives of *men*.

It *is* a great fellowship, but its tests are merciless and its judgment unerring. The weak are known, and the strong, the timid and the brave, the mean and the great-hearted. Is this profession of the law, then, a great monster without heart, as cold as Fate? On the contrary, nowhere else shall we find the individual counting for so much, and the new lawyers will see, too, that the bar is friendly and helpful.

Will they also find that it is honorable and true? This is the question that cartoonists put on the front page and editorial writers in their columns. Lawyers sometimes answer too quickly, confess too much. At the recent meeting of the American Bar Association at Milwaukee, visitors observed a large painting that was hung in the lobby. It portrayed that strange medieval cult of the Flagellants—men, women, even young children, who flogged themselves cruelly for their souls' sake, "a form of exalted devotion" which "occurs in almost all religions." It struck a friend of mine that this was a most appropriate subject for the keynote of a lawyers' meeting that was all too self-condemnatory. The salvation of the bar lies elsewhere —in something positive and active, in the conscience of the individual lawyers.

Let me say a word on this, and have done. The origin of the idea of conscience, something guiding us from within, not from without, is obscure. That "silent yet prophetic people who dwelt by the Dead Sea" had glimpses of it, in their moments of communion with the Most High, and in the thirteenth century of the Christian era the idea began to be generally understood, and became a dominant factor in the life of man. It is no longer regarded simply as a negative, a reproving force; it is the mainspring of our movement upward, the creative force of all professional associations that have not in them the seeds of decay. Let these young men allow the cartoonist, the editorial writer, and the public speaker to do their *thinking* for them, if they must, but I beg of them, in the name of their profession, not to let anyone do their *believing* for them. They must be assured that the courts, ever the guardians of the moral standards of the profession, will be the first to respect and sustain them in their independence.

We talk of the *quality* of a man's conscience, but we do not sufficiently reflect on the importance of the *quantity* of conscience in a community, a state, a nation, or a profession. "The Greeks," said John Morley, "became corrupt and enfeebled, not for lack of ethical science" (there were *thinkers* enough among them), "but through the decay in the numbers of those who were actually alive to the reality and force of ethical obligations." This is the true battlefield; does it not thrill us; can we not see in our mind's eye, from afar, the scene in many an obscure law office, where a brave man is proving to himself—for there are no spectators to cheer and inspire him that he will sacrifice all, that he will endure all things, sooner than give up the faith of his fathers, the ideals into which he was born.

This is what leaders of the bar reckon on, in times of stress—that when any moral question is put squarely up to the bar the reaction is always right —no man who relied on this ever had his confidence betrayed. Here then is waiting for these young men and young women, in the hour of their country's greatest need, for the preservation and glory of their profession,

a field of use for the best and most characteristic thing they have, their own most precious possession, far above all intellectual gifts, which does not fail from use, but grows ever clearer and stronger—the unspoiled conscience that came to them from on high.

If it please the Court, on behalf of the State Board of Law Examiners, I move the admission of this class to the bar.

What's Wrong with Law in the United States?

By Professor John P. Noonan, Loyola University School of Law, Condensed from 10 Notre Dame Lawyer 349, May 1935

In glancing over a number of judicial opinions in preparation for this article, I was struck by the naïve unanimity with which the law is called "an ancient and honorable profession." In itself the law should be and is an honorable profession. It is not a trade, not a job, the sole object of which is to make money; it is a profession; the lawyer is an officer of the court, charged no less than the court with the furtherance of justice. In and for this world I venture to say that it is the most honorable of the professions.

It seems, however, that this honorable profession has fallen upon evil days, and lest any one should misconstrue my motives, instead of my own opinion, I shall quote from one of the most respected men now on the Supreme Bench, Mr. Justice Cardozo. His opinion is taken from the case of People ex rel. Karlin v. Culkin, 248 N. Y. 465, 162 N. E. 487, 60 A.L.R. 851, decided by the New York Court of Appeals in 1928.

"A petition by three leading bar associations, presented to the Appellate Division for the First Judicial Department in January, 1928, gave notice to the court that evil practices were rife among members of the bar. 'Ambulance chasing' was spreading to a demoralizing extent. As a consequence the poor were oppressed and the ignorant overreached. Retainers, often on extravagant terms, were solicited and paid for. Calendars became congested through litigations maintained without probable cause as weapons of extortion. Wrongdoing by lawyers for claimants was accompanied by other wrongdoing, almost as pernicious, by lawyers for defendants. The helpless and the ignorant were made to throw their rights away as the result of inadequate settlements or fraudulent releases. No doubt, the vast majority of actions were legitimate, the vast majority of lawyers honest. The bar as a whole felt the sting of the discredit thus put upon its membership by an unscrupulous minority."

I quote from an article in the American Law School Review for April, 1933, by Elliott E. Cheatham of Columbia University.

"One of my colleagues is especially skilful as a first year instructor in smashing, by ridicule and direct attack, the old attitudes and conventional standards of his students. He has confessed to me that his work as a nihilist should be followed by work

planned to encourage the student to construct a new and worth while set of standards."

I invite your serious consideration for those words. Everybody knows that this first year instructor, who is such a skilful nihilist, is the rule rather than the exception in our larger colleges. And what does Professor Cheatham mean by "the old attitudes and conventional standards?" He means all Christian ethics and religion, all ethics and religion, Christian or other. And what is offered in its place by his own confession? Nothing, absolutely nothing. And why not? Because they have nothing to offer.

Another cause of the present low estate of the legal profession in this country is the influence of politics. Cheap politics and law cannot dwell together. Get our judges, every last one of them, out of politics as soon as possible and as thoroughly as possible. Let judges be appointed by the executive, and no one appointed except on the basis of ability and experience as a lawyer. You say: "That won't work." I say it does work excellently in England and Canada and in the Federal judiciary. Let lawyers know that it is by ability and merit and not by back-slapping and log-rolling that they may expect appointment to the bench and the legal profession will be reformed overnight.

There is another reason more personal and more difficult of improvement, and that is what might be called the inertia of the profession itself. A lawyer is called on all day and every day to explain to clients how they can keep just on the right side of the law but only just, in other words, to tell them how far they can go and still be immune from punishment. This advice, which he gives to others, has a tendency to drag down his own morale, to make him forget his duty to his country and his fellowmen, to weaken his love for honesty and justice, and to cause him gradually to follow the advice he gives his clients in his own life, in his own personal affairs. It is the danger of casuistry, and it is a real danger, and one which a lawyer must guard against all his life. The blame for this falls back upon a corrupt and dishonest community, and this leads me to say that much of the blame for the faults of the legal profession falls there. What about your stupid and ignorant and wicked people who think that a judge ought to decide a case in their favor because he knows their second cousin, or he goes to the same church, or he owes them a favor, and thousands of other reasons which have no place in the administration of justice? They do not realize that the judge is sworn to uphold the law, to mete out justice without fear or favor. We need more Mansfields on the bench and we need more men who respect the principles of Mansfield in the community.

Give the young men in law school a chance. Apply remedies to these abuses so that they will find conditions favorable for the development of men who can keep the law an honorable profession. Our young men are as good as the English or Irish or Canadian; many come of the same stock. It is the conditions that are wrong. Let us develop men such as handled the trial of the great Cardinal Newman in England. The Cardinal describes him as trembling and breaking out into a sweat for fear the lawyer for the defense would even insinuate that he was acting from prejudice against the defendant. And well he might. Prejudice even against a Catholic and in those times would certainly have kept him from advancement and might even have had worse consequences. This is typical of the law as it is administered in England. What's wrong with it in the United States?

Among the New Decisions

Appeal and Error — *communication with jurors.* In Bowman v. State of Indiana, — Ind. —, 96 A.L.R. 522, 192 N. E. 755, it was held that misconduct of the bailiff after submission of a criminal case to the jury, in passing to and from the jury room and remaining therein, consulting with the judge and others, and so conducting himself as to indicate that he is unduly interested in the proceedings and is conveying information to the jurors, is not ground for reversal, where the defendant and his counsel have knowledge of the alleged misconduct before the return of the verdict, but make no complaint until after verdict of guilty is returned.

Annotation: Knowledge by defendant or his attorney, before return of verdict in criminal case, of misconduct in connection with jury after their retirement as affecting right to new trial or reversal. 96 A.L.R. 530.

Bailment — *degree of care owed by gratuitous bailee.* In Hargis v. Spencer, 254 Ky. 297, 96 A.L.R. 903, 71 S. W. (2d) 666, it was held that one to whom a sum of money was intrusted for gratuitous safe-keeping is obligated only to use slight care, and is answerable for its loss only in case of gross negligence and bad faith, and therefore is not bound to exercise that degree of care and diligence which under similar circumstances a person of ordinary prudence and care would have used with reference to the money in question if it had been his own property.

Annotation: Duty and liability of gratuitous bailee or mandatory. 96 A.L.R. 909.

Carriers — *liability of automobile carriers for injury to passengers.* In Lewis v. Pacific Greyhound Lines, 147 Or. 588, 96 A.L.R. 718, 34 P. (2d) 616, it was held that a motor-bus carrier is bound to exercise the highest degree of care in promoting the safety of a passenger so long as the relationship of passenger and carrier exists.

Annotation: Duty and liability of carrier of passengers for hire by automobile. 96 A.L.R. 727.

Constitutional Law — *regulation of electricians and electrical wiring.* In City of Tucson v. Stewart, — Ariz. —, 96 A.L.R. 1492, 40 P. (2d) 72, it was held that the licensing and regulating by a municipality, under charter authority, of the business of electric wiring and installation, and of those carrying on such business, is a proper exercise of the police power to afford citizens security, comfort, and safety in the use and occupancy of their property.

Annotation: Municipal regulation of electricians and the installation of electrical work. 96 A.L.R. 1506.

Contractor's Bonds — *coal as material under.* In Independent Bridge Company for Use of James Ainsley v. Aetna Casualty & Surety Company, 316 Pa. 266, 96 A.L.R. 549, 175 A. 644, it was held that coal furnished to one entering into a subcontract for bridge construction work, and used in the firing of boilers and otherwise about the work, is not within a provision of the subcontractor's bond permitting any person having a claim remaining unpaid for "labor and materials furnished in or about the construction of such contract" to sue on the bond.

Annotation: Fuel furnished contractor or subcontractor as within coverage of bond to pay for all materials furnished. 96 A.L.R. 553.

Criminal Law — *excusing jurors.* In State of Oregon v. Edward Savan, — Or. —, 96 A.L.R. 497, 36 P. (2d) 594, it was held that one charged with crime cannot complain of the action of the court in excusing a juror who had been selected, where it does not appear that he had exhausted all of his peremptory challenges or that any juror remained on the panel who had been challenged for cause.

Annotation: Excusing qualified juror drawn in criminal case as ground of complaint by defendant. 96 A.L.R. 508.

Criminal Law — *refusal to accept plea of guilty of lesser offense.* In Frady v. People of the State of Colorado, — Colo. —, 96 A.L.R. 1052, 40 P. (2d) 606, it was held that the court does not abuse its discretion on a trial for murder in submitting the case to the jury and refusing to accept the defendant's plea of guilty of murder in the second degree, made pursuant to a promise of the district attorney to recommend its acceptance in return for the defendant's service to the state in solving the crime, where there is evidence that the defendant is at least equally as guilty of the crime as his associate, who has been separately tried and convicted of murder in the first degree, each of the defendants having testified in the former trial and charged the actual killing to the other.

Annotation: Duty of court to accept tendered plea of guilt of lesser degree of crime where prosecuting officer has agreed to recommend acceptance of such plea if defendant will turn state's evidence. 96 A.L.R. 1064.

Criminal Law —*Reversible Error — furnishing or reading instructions to jury, after retirement.* In Little v. United States of America, 73 F. (2d) 861, 96 A.L.R. 889, it was held that action of the trial court on a criminal prosecution, in response to a request of the jury for a copy of the court's instructions, directing the court stenographer to attend in the jury room and read the instructions in their entirety, in compliance with which the reporter goes to the jury room and reads the instructions, constitutes reversible error, where the record fails affirmatively to disclose that no prejudice resulted, although in the order the court states that the reading shall be without repetition or emphasis on any part of the instructions and that the stenographer shall retire upon completion of the reading.

Annotation: Furnishing or reading instructions to jury, in jury room, after retirement, as error. 96 A.L.R. 899.

Damages — *innocent infringement of trademark.* In Liberty Oil Corporation v. Crowley, Milner, & Company, 270 Mich. 187, 96 A.L.R. 645, 258 N. W. 241, it was held that one cannot be held accountable for profits made in sales constituting infringement of a trademark, if the infringement was innocent, without knowledge of the prior claims or rights, and the illegal

practice is stopped upon discovery of the truth.

Annotation: Liability for innocent infringement of trademark or tradename. 96 A.L.R. 651.

Damages — *interest on property damage.* In Necedah Manufacturing Corporation v. Juneau County, 206 Wis. 316, 96 A.L.R. 4, 237 N. W. 277, it was held that interest from the date of demand for payment of plaintiff's claim, on the amount of damages found by the jury in an action for negligently setting fire to plaintiff's property, is properly included in the judgment, since, though the damages were unliquidated, the market or reasonable value of the destroyed property was ascertainable to a reasonable certainty.

Annotation: Interest on damages for period before judgment for injury to, or detention, loss, or destruction of, property. 96 A.L.R. 18.

Elections — *purging registration lists.* In Pierce v. Superior Court in and for Los Angeles County, 1 Cal. (2d) 759, 96 A.L.R. 1020, 37 P. 460, it was held thaat the state may proceed in an action in equity in the superior court to purge the great register of fraudulent registrations of voters.

Annotation: Remedy and procedure for purging voters' registration lists. 96 A.L.R. 1035.

Elections — *statutes construed which make it unlawful to attack a candidate for public office except upon conditions named.* In Ex Parte Hawthorne, Ex Parte Mahoney, — Fla. —, 96 A.L.R. 572, 156 So. 619, it was held that a statute making it unlawful during the eighteen days preceding a primary election to publish or circulate, or to cause to be published or circulated, any charge or attack upon a candidate unless a copy of the same has been personally served upon him at least eighteen days prior to such election, has no reference to oral statements or addresses delivered in a public forum, nor does the prohibition of the statute extend to mere publication in a newspaper that an address has been made by another candidate attacking a candidate and purporting to give details of the attack so made, but the statute is limited to the publication or circulation of addresses reduced to writing or visible form and intended to be passed from hand to hand.

Annotation: Constitutionality and construction of statutes relating to charges and attacks on candidates for nomination or election to public office. 96 A.L.R. 582.

Evidence — *proof of preliminary facts in introducing dying declarations.* In Commonwealth of Massachusetts v. Polian, — Mass. —, 96 A.L.R. 615, 193 N. E. 68, it was held that it is not essential on a trial for abortion, to consideration by the jury of dying declarations of the party upon whom the operation was performer, accusing the defendant, that the jury should find beyond a reasonable doubt the preliminary facts required to make such evidence admissible, it being sufficient, even in a criminal case, to prove by a preponderance of the evidence the preliminary facts necessary to the admission of evidence.

Annotation: Quantum of proof of preliminary facts necessary to admissibility of dying declarations. 96 A.L.R. 621.

Evidence — *statutes making statements of deceased person admissible evidence.* In Re Wilfred B. Keenan, — Mass. —, 96 A.L.R. 679, 192 N. E. 65, it was held that a statute providing that a declaration of a deceased person shall not be inadmissible in evidence as hearsay if the court finds that it was made in good faith before the

commencement of the action, and upon the personal knowledge of the declarant, should be construed liberally to extend rather than to restrict the intended relief and to effectuate its corrective purpose.

Annotation: Constitutionality, construction, and application of statutes making statements of deceased persons admissible in evidence. 96 A.L.R. 686.

Evidence — *waiver of privilege.* In Leeds v. Prudential Insurance Company of America, — Neb. —, 96 A.L.R. 1414, 258 N. W. 672, it was held that if a patient is accompanied by a friend, who remains with her during examination by a physician, the fact that this third person was allowed to be present is not in itself a waiver of privilege by the patient.

Annotation: Presence of third person as affecting privileged character of communications between patient and physician. 96 A.L.R. 1419.

Fire Insurance — *vacancy provision.* In Conley v. Queen Insurance Company of America, 256 Ky. 602, 96 A.L.R. 1255, 76 S. W. (2d) 906, it was held that where property insured against fire is vacant at the time of the issuance of the policy, although its vacancy is known to the insurer or its agent at that time, there is an implied promise on the part of the insured to comply with the policy provisions relative to vacancy or nonoccupancy previous to a loss, in the absence of an agreement of the parties, or of evidence of an expectation on their part that the property shall remain vacant during or beyond the vacancy period permitted by the policy.

Annotation: Effect on provisions of insurance policy as to vacancy, of agent's representations made, or knowledge acquired, prior to issuance of policy. 96 A.L.R. 1259.

Gifts — *unconsummated gift as trust.* In Re Estate of Allshouse, 304 Pa. 481, 96 A.L.R. 379, 156 A. 69, it was held that equity will not give effect to an imperfect gift by erecting it into an enforceable trust merely because of the imperfection.

Annotation: May unconsummated intention to make a gift of personal property be made effective as a voluntary trust. 96 A.L.R. 383.

Insurance — *exemption of proceeds.* In Bank of Brimson v. Graham, — Mo. —, 96 A.L.R. 399, 76 S. W. (2d) 376, it was held that an exemption of moneys received by the beneficiary from an assessment plan life insurance policy does not extend to land not otherwise exempt, the balance of the purchase price of which is paid by the use of such moneys, under a statute exempting "money or other benefit, charity, relief, or aid to be paid, provided, or rendered," by any insurance corporation doing business on such plan, although the value of the land does not exceed the amount so paid.

Annotation: Exemption of property purchased with exempt proceeds of insurance. 96 A.L.R. 410.

Insurance — *impaired eyesight as physical defect or infirmity.* In Ocean Accident & Guaranty Corporation v. Rubin, 73 F. (2d) 157, 96 A.L.R. 412, it was held that nearsightedness and astigmatism are not "local or constitutional diseases" within the meaning of questions and answers in an application for insurance against accidental death as to whether the applicant had, or during the preceding five years had had, such diseases.

Annotation: Impaired eyesight as within representation, warranty, or condition of insurance policy as regards health or physical condition. 96 A.L.R. 429.

Insurance — *joinder of insurer and insured in compulsory indemnity or*

liability policy. In De Lopez v. Townsend, 37 N. M. 574, 96 A.L.R. 342, 25 P. (2d) 809, it was held that a motor carrier and a casualty company issuing a policy indemnifying it against damage from injuries to third parties, required as a condition to the issuance to the carrier of a certificate of public convenience and necessity, may properly be joined as parties in an action for death through negligence of the carrier in operating a motor vehicle, under a statute providing that all such policies shall be for the benefit of and subject to "immediate suit or action thereon" by any person who sustains actionable injury or loss protected thereby, although a rider to the policy states that the insurer agrees to pay any final judgment, within the limits of the policy, for injury or death resulting from the use of motor vehicles pursuant to the certificate. (On rehearing.)

Annotation: Joinder of insurer and insured under policy of compulsory indemnity or liability insurance in action by third person. 96 A.L.R. 356.

Intoxicating Liquors — *construction of statute prohibiting sales within a prescribed distance from certain institutions.* In Board of Trustees of Leland Stanford Junior University v. State Board of Equalization, 1 Cal. (2d) 784, 96 A.L.R. 775, 37 P. (2d) 84, it was held that a statute making one guilty of a misdemeanor who, "upon or within 1½ miles of the university grounds or campus, upon which are located the principal administrative offices of any university," sells or gives away alcoholic liquors, applies to a pharmacy located within a mile from the nearest point of the boundary of the university campus, although the administration building on the campus is more than 2 miles from the pharmacy in the usual course of travel, but less than a mile and a half in a straight line.

Annotation: Mode of measurement and computation of distances for purposes of statute or ordinance which prohibits sale, or license for sale, of intoxicating liquor within given distance from church, university, school, or other institution or property as a base. 96 A.L.R. 778.

Judges — *right of qualified judge to decline to act.* In State of Florida ex rel. Palmer v. Atkinson, — Fla. —, 96 A.L.R. 539, 156 So. 726, it was held that it is the duty of a circuit judge eligible and competent to sit in a cause to exercise his judicial functions therein, and to make all necessary orders and decrees pertaining thereto, regardless of personal embarrassment, feelings of delicacy, or other considerations not amounting to legal disqualifications.

Annotation: Right of judge not legally disqualified to decline to act in legal proceeding upon personal grounds. 96 A.L.R. 546.

Jury — *substitution of juror.* In People of the State of New York v. Mitchell, 266 N. Y. 15, 96 A.L.R. 791, 193 N. E. 445, it was held that a constitutional right of trial by jury, as used prior to the adoption of the Constitution, is not infringed by a statute permitting the court, when about to try one charged with a felony, if the trial is likely to be protracted, to call one or two additional jurors, to be known as "alternate jurors," who shall have the same qualifications as the jurors already sworn, shall be drawn from the same source and in the same manner, take the same oath, be subject to the same examination and challenges, sit with the regular jurors, attend the trial at all times, and be kept in the custody of the sheriff the same as the other jurors, and declaring that such alternate jurors shall be discharged upon final submission of the case to the jury, but that if, before final submission, a juror dies, or becomes ill, or for any other reason is unable to perform his duty, the court may order his discharge and draw the name of an alternate, who shall be subject to the same regulations as though he had been selected as one of the original jurors.

Annotation: Constitutionality of statute providing for substitution or replacement of individual juror during trial. 96 A.L.R. 793.

Landlord and Tenant — *lack of title as affecting liability.* In Ziulkowski v. Kolodziej, 119 Conn. 230, 96 A.L.R. 1065, 175 A. 780, it was held that one in possession and control of real estate may be liable for injury to a tenant through failure to make repairs, although he does not have the legal title.

Annotation: Liability of one exercising the rights of an owner of realty for injuries due to its condition, as affected by want of legal title. 96 A.L.R. 1068.

Landlord and Tenant — *waiver of lien by acceptance of chattel mortgage or conditional sales contract.* In Armstrong v. Thompson, — S. D. —, 96 A.L.R. 561, 255 N. W. 561, it was held that a landlord, under a lease providing for crop and cash rent, by taking a note from his tenant for rent due and a mortgage as security on the tenant's undivided interest in crops grown on the rented premises, does not waive a provision in the lease whereby he retains title to the crops until a settlement is made with the tenant.

Annotation: Landlord's acceptance of chattel mortgage, or conditional sales contract, as waiver of landlord's lien or reservation of title. 96 A.L.R. 568.

Municipal Corporations — *diversion of tax money from purposes*

for which collected. In City of Newport v. McLane, — Ky. —, 96 A.L.R. 655, 77 S. W. (2d) 27, it was held that city commissioners who violate plain constitutional and statutory provisions against diverting tax money from the purpose for which it was collected are not shielded from civil liability for their acts as administrative officers in diverting the funds because they also act in a legislative capacity in passing the resolution making the diversion.

Annotation: Liability of municipal officers for diversion of money from one fund to another. 96 A.L.R. 664.

Negligence — *contributory negligence of pedestrian at street crossing.* In Horwitz v. Eurove, 129 Ohio St. 8, 96 A.L.R. 782, 193 N. E. 644, it was held that a city ordinance, the applicable part of which provides, "The right of way upon street crossings . . . shall, in all cases, be given to pedestrians by all vehicles of every kind," creates a preferential but not an absolute right in favor of the pedestrian. Such pedestrian is still under the legal duty to exercise ordinary care for his own safety; and whether he has done so in a particular case is a jury question where the evidence is conflicting. Morris v. Bloomgren, 127 Ohio St. 147, 187 N. E. 2, 89 A.L.R. 831, distinguished.

Annotation: Contributory negligence of pedestrian at street crossing as affected by statute or ordinance. 96 A.L.R. 786.

Pensions — *right to reduce pension granted to employee.* In Schofield v. Zion's Co-operative Mercantile Institution, — Utah, —, 96 A.L.R. 1083, 39 P. (2d) 342, it was held that a contract on the part of a mercantile corporation binding it, upon fulfilment of the conditions by an employee, to pay the stipulated pension during the employee's lifetime, and not a mere gratuity which it may reduce after the employee's retirement on a pension, arises from the establishment by it of a pension system, to promote the welfare of its employees and the encouragement of long and faithful service by them, where the plan provides that all officers and employees of the company who have attained the age of sixty-five years and have served it for twenty years shall be entitled to retire on a pension, at a certain rate based on salary and length of service, no pension fund being created and employees not contributing toward the pensions, notwithstanding the plan provides that no action taken shall be construed as giving any officer or employee a right to be retained in the service or any right or claim to any pension allowance, and also reserves the right to change any rules or regulations and the "basis" of pension allowances by increasing or reducing the same.

Annotation: Rights and liabilities with respect to private pensions as between employer and employee. 96 A.L.R. 1093.

Principal and Agent — *loss of principal's funds deposited in agent's bank account.* In Hibberd v. Furlong, 269 Mich. 514, 96 A.L.R. 794, 257 N. W. 737, it was held that one who, in giving an order to stockbrokers to purchase stock when it reaches a certain price, delivers to them his check on a local bank, payable to the brokers, expecting that the check will be deposited by them in their own bank and paid through the clearing house, and that when the stock reaches the price named the brokers will pay for it with their own personal check, cannot hold them personally responsible for the loss in case they pursue the contemplated course of conduct and deposit the money to their own credit in a bank which fails before the stock is purchased.

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Annotation: Responsibility of attorney, broker, or other agent depositing his principal's money in his own name or account for loss resulting from the failure of depository or depreciation of currency. 96 A.L.R. 798.

Release — *representation of nonliability as fraud.* In Madison Trust Company v. Helleckson, — Wis. —, 96 A.L.R. 992, 257 N. W. 691, it was held that a release by parents of liability for the killing of their child by a motorist, given to the wrongdoer and his insurer in consideration of the payment by the insurer of funeral expenses and an attorney's fee, may be avoided for false representations, made by the insurer's agent, an attorney at law, and justifiably relied on by the parents, that the payment was a mere gratuity, as a customary gesture of good will in a nonliability case, that if suit were brought, the gratuitous offer would be withdrawn and the action would be useless, that unless the driver of the car was found to be guilty of gross or criminal liability, there could be no liability, and that if he were found guilty and sent to prison it might result in the death of his mother.

Annotation: Representation by insurer's agent as to nonliability as fraud avoiding release. 96 A.L.R. 1001.

Succession Tax — *deduction of expense of will contest.* In People of the State of Illinois v. Estate of Klein, 359 Ill. 31, 96 A.L.R. 622, 193 N. E. 460, it was held that expenses incurred by executors in a will contest are for the benefit of the estate, and are proper expenses of administration, which may be deducted in determining the amount subject to inheritance tax.

Annotation: Deductibility in determining amount of succession or gift tax, of amount expended by distributee, legatee, or donee in establishing right to take, or by executor or admin-

istrator in resisting attack on will or claims to participate in distribution. 96 A.L.R. 626.

Succession Tax — *intangible property of nonresident.* In re Estate of Frank, — Minn. —, 96 A.L.R. 667, 257 N. W. 330, it was held that a resident of North Dakota placed intangibles in the custody of a trustee in Minnesota where the trust was to be administered. He reserved the power to supervise investments by the trustee and to change or revoke the trust. He died, domiciled in North Dakota, without having exercised the power of revocation. The transfer of the corpus of the trust, which took place upon his death while a resident of North Dakota, occurred there and is subject to an inheritance tax only under the laws of that state. It was not subject to an inheritance tax in Minnesota. (On reargument.)

Comment Note:—Situs for purposes of succession tax in respect of intangibles placed by a trustor domiciled in one jurisdiction with a trustee domiciled in another. 96 A.L.R. 674.

Taxation — *penalties for failure to pay.* In Hamel v. Marlow, — Miss. —, 96 A.L.R. 924, 157 So. 905, it was held that a taxpayer who by suit for an injunction unsuccessfully contests the validity of a privilege tax is not relieved from payment of the penalty imposed by statute for nonpayment of the same when due, although he acts in good faith and a statute expressly confers jurisdiction on the chancery court, in a suit by a taxpayer, to restrain the collection of any taxes levied or attempted to be collected without authority of law.

Annotation: Liability to penalty imposed for failure to pay tax of one who in good faith contested its validity. 96 A.L.R. 925.

Undue Influence — *act of party other than beneficiary.* In Addis v. Grange, 358 Ill. 127, 96 A.L.R. 607, 192 N. E. 774, it was held that it is immaterial, on the question whether a court of equity will set aside a deed for undue influence in its procurement, whether the influence was exercised by the beneficiary or another.

Annotation: Undue influence by third person in which immediate beneficiary did not participate. 96 A.L.R. 613.

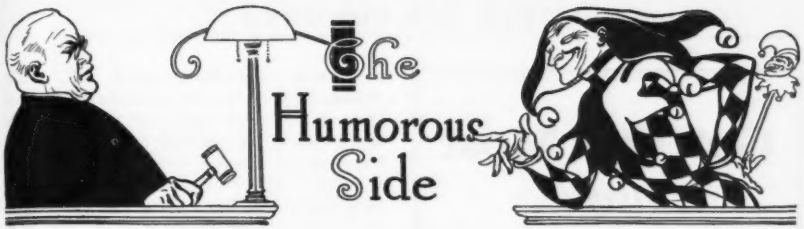
Wills — *devolution of property where trust fails.* In Re Estate of Ralston v. Kagarise, 1 Cal. (2d) 724, 96 A.L.R. 953, 37 P. (2d) 76, it was held that an estate disposed of by will does not pass to the executor individually.

Annotation: Devolution of property under will giving property to one "in trust" (or containing terms indicative of possible trust), where trust fails for uncertainty or there is failure to show intent to create trust. 96 A.L.R. 958.

Case and Comment
THE LAWYERS MAGAZINE

The Publishers are not responsible for the personal views of the authors of signed articles. Their publication is not to be deemed an indorsement of any position taken on any controversial question.

Established in 1894. Published by the Lawyers Co-operative Publishing Company. President, W. B. Hale; Vice-President, J. B. Bryan; Vice-President, T. C. Briggs; Treasurer, G. M. Wood; Secretary, Ezra A. Hale; Editors-in-Chief, G. H. Parmele and W. A. Estrich. Office and Plant: Aqueduct Building, Rochester, N. Y.



Mingle a little folly with your wisdom.—Horace.

Witness Dismissed.—Here is a humorous bit taken from an actual cross-examination of a hot-headed Police Sergeant in the Traffic Court in the City of Detroit.

Defendant's Attorney to Police Sergeant.

Question: "Now when you inspected the abutment which the defendant struck, was there any design painted on it?"

Answer: "Yes."

Question: "Was the paint old or fresh?"

Answer: "What?"

Question: "Was it distinct?"

Answer (Very hotly): "H—, how do I know if it would stink, I didn't smell it."

Contributor: John B. Mitchell,
Detroit, Mich.

A Perplexity.—As constable, H. D. had attached certain personal property on a writ issued out of the justice court. The attached property was claimed by a third party to the action, and in order to exonerate himself from further liability the constable on the advice of somebody or other called a constable's jury to try the rights of property. The constable presided over the hearing, swore the witnesses, had the testimony of the claimant and the defendant produced before the jury, and then proceeded to instruct the jury as follows:

"Wa-al, now, gentlemen of the jury, it becomes my duty to instruct you as to the law in this here case. You are instructed that if you think that the claimant has told the truth, and that the defendant has lied, then it will be your duty to find for the claimant. But if on the other hand you find that the claimant has lied and that the defendant has told the truth, then it will be your duty to find for the defendant. But gentlemen of the jury, if you think about this case as I do, if you think that they have both lied, then I do not know what in h—— you'll do." Contributor: C. R. Wade,
Bandon, Ore.

A Well-Dressed Corpse.—Commenting in a will contest case on evidence of insane delusions, Mr. Justice Wiest of the Michigan Supreme Court, In re Brown's Estate, 240 Mich. 121, 124, referring to the fact that the testatrix, when she placed the body of her first husband in the casket, dressed it in a black and white checked suit, with celluloid collar, bright red necktie and diamond stickpin, said:

"We cannot say that clothing suitable for Florida is so inappropriate for last obsequies as to be an insane use thereof."

Contributor: Clare E. Hoffman,
Allegan, Mich.

Neighbors.—Q. Did you ever live near her?

A. Yes.

Q. How far did she live from you?

A. Not a mile.

Q. Not a mile does not mean anything—close or far away or what?

A. Not so close.

Q. How many houses away?

A. Just across, across the street.

Contributor: Leslie C. Finley,
Circuit Court Reporter,
Honolulu, Hawaii.

Synonym.—In a recent case tried in the middle West and in which the United States was a party the following objection appears in the record.

"Counsel for the Government: The Government objects to the introduction in evidence of Respondent's Exhibit No. 8, and at this point renews its objection to all of the foregoing testimony of the witness and moves to strike all of the foregoing testimony of the witness, for that the Exhibit and the testimony constitutes neither statements of fact nor of opinions, in the legal sense of the latter word, but *theories, surmises, conjectures, prophecies, guesses, legal*

conclusions, definitions which are in the province of the courts to make; also, that the witness is not testifying to anything in his previous training or experience which has qualified himself, as distinguished from any other well educated man, to discuss theories and conjectures upon this subject."

Contributor: H. S. Abbott,
Minneapolis, Minn.

True to Form.—The absent-minded law professor returned home one evening, and, after ringing his front door bell for some time to no effect, heard the maid's voice from the second-story window.

"The professor is not in."

"All right," quietly answered the professor. "I'll call again." And he hobbled down the stone steps.—*Exchange.*

No Lawyer, But Business Man.—After terrific struggle, the law student finally finished his examination paper, and then at the end wrote:

"Dear Professor: If you sell any of my answers to the funny papers I expect you to split 50-50 with me."

Changed His Mind.—A man consulted a real estate agent for a write-up of the property he wanted to sell. When the agent submitted his description of the property, the owner exclaimed: "Read that again." After the second reading, the owner said:

"I don't think I'll sell. I've been looking for that kind of place all my life, but until you read that description I didn't know I had it."—*Exchange.*

Simple Bookkeeping.—A colored truck operator was informed that he could not get his money until he had submitted an itemized statement for a certain hauling job. After much meditation he scribbled the following bill:

"3 comes and 3 goes at 4 bits a went—$3."—*Exchange.*

He Might Try.—Tommy returned from school with a perplexed brow. "What's the matter, sonny?" asked his father.

"I can't get a certain sum right," returned the boy. "I wish you'd help me with it, dad."

His father shook his head. "Can't, my boy," he said, "it wouldn't be right."

"I don't suppose it would," Tommy re-

plied, "but you might have a try!"—*Exchange.*

Forgive and Forget.—In the announcement of the revival at the Church of the Brethren, made in **The Herald** last week, the linotype spoiled a perfectly good compliment by misplacing one letter. The sentence should have read: "He believes in a happy religion and lives it." But the linotype made it "He believes sin a happy religion and lives it." Can an apology ever fix it?—*Sabetha (Kans.) Herald.*

Optimistic.—Law Teacher (in contracts): What is a debtor?

Witty Student: A man who owes money.

Law Teacher: And what is a creditor?

Witty Student: A man who thinks he is going to get it back.—*Exchange.*

Verbatim.—"So, your name is George Washington," the lawyer said in cross-examination.

"Yessir," replied the small colored lad.

"I guess you try to be exactly like him, or as nearly as possible?"

"Lak who?"

"Why, like George Washington."

"Ah cain't help bein' lak Jahge Wash-in'ton, cause dat's who I is."

Strict Orders.—The Boss: On your way to Smith and Sons you will pass a football field.

Office Boy (hopefully): Yes, sir.

The Boss: Well, pass it.—*Exchange.*

A Giveaway.—Margaret is only seven, but sometimes quite naughty. On one occasion her mother, hoping to be particularly impressive, said:

"Don't you know that if you keep on doing naughty things your children will be naughty, too?"

Margaret dimpled, and cried triumphantly, "Oh, mother, now you have given yourself away."

Out of Tune.—Nervous Musician: "Madam, your cat has kept us awake two nights with its serenade."

Mrs. Nextdoor (tartly): "What do you want me to do, shoot the cat?"

Nervous Musician: "No, madam, but couldn't you have him tuned?"

Should Shoot With Care.—In the American advance during the final days of the war, a sergeant ordered an unbleached private to go into a dugout and clean out any Germans that happened to be there.

The colored gentleman blanched a bit, swallowed his Adam's apple, and then said, huskily, "Ef you sees three or fo' men cum a runnin' out ob dat hole, don't shoot de fust one."—*Exchange.*

A Woman's Mind.—Lawyer: "Don't you know that you should always give a woman driver half of the road?"

Witness: "I do, as soon as I find out which half she wants."

On the Chin.—That lawyer has two sons. One is in politics and the other isn't much good either.—*Atchison Globe.*

Nope—They Were Softies.—"Listen to this, Bessie," said Mr. Tubb. "This article states that in some of the old Roman prisons that have been unearthed they found the petrified remains of the prisoners."

"Gracious!" exclaimed Mrs. Tubb. "Those must be what they call hardened criminals, I expect."—*Humorist* (*London*).

He Believes It.—Political Rival—"An' how's Jones doing, doctor?"

Doctor—"Poor fellow, he's lying at death's door."

Political Rival—"That's grit for ye; at death's door, an' still lying.—*Toronto Globe.*

A Fall from Grace.—Lawyer: "When the elevator fell with you I suppose all your sins flashed before your eyes?"

Witness: "Not all. We only dropped five stories."

—*Building Owner and Manager.*

We Like a Regular Trade.—Prison Governor (to released convict)—"I'm sorry. I find we have kept you here a week too long."

Convict—"That's all right, sir. Knock it off next time."—*Louisville Times.*

Thirty Days!—Judge—"What were you doing in that place when it was raided?"

Locksmith—"I was making a bolt for the door."—*Wise Cracks.*

Hollow!—Two little newsboys were loitering around a broken scale, when a

man who might easily have been the avoirdupois champion stepped on it.

The hand swung slowly round to the 40-lb. mark.

Both boys gasped, and one was heard to exclaim, "My God, Jimmie, he's hollow."—*Exchange.*

Flapper Answers.—A safety authority was quoting accident statistics in a Western college. In his audience were two flappers.

Out of bright red lips came this question: "What does he mean, Lulu when he says 'two point five' men are killed out of each 1,000 injured?"

"Why, Betty," said Lulu, "he means two are killed and five are at the point of death."—*Exchange.*

On and On.—Law Teacher (who has spoken for two hours): I shall not keep you much longer. I am afraid I have spoken at rather great length. There is no clock in the room, and I must apologize for not having a watch with me.

Student: There's a calender behind you, mister!—*Exchange.*

Aid to the Destitute.—"Burglars broke into my house last night."

"Yes? Get anything?"

"They searched everywhere, then left a five dollar bill on my bureau."—*Wall Street Journal.*

Limited Edition.—They say that many Hollywood hosts issue invitation cards to their elaborate parties, reading:—"Admit bearer and ONE wife."—*Passing Show.*

Harlemania.—Rastus: "What all is the name of yo' new wife, Big Boy?"

Big Boy: "Ise calls her Shasta. Every time she goes shopping, shasta have this, shasta have dat!"—*Exchange.*

Academic Distinction.—In an Indiana college town a student called at a boarding house to inquire about rooms.

"And what do you charge for your rooms?" he asked.

"Five dollars up," was the reply.

"Yes, but I'm a student," he said thinking the price a little high.

"That being the case, the price is $5 down."—*Toronto Globe.*

Too Many Controls.—"How many controls are there on your radio?"

"Three; my mother-in-law, my sister-in-law and my wife."—*Exchange.*

All Work, No Play.—First Lawyer: "Have you seen one of those instruments which can tell when a man is lying?"

Second Lawyer: "See one! I married one!"—*Exchange.*

Respondent Superior.—This notice is said to have been posted up in Massachusetts: "Any owner whose dog shows signs of illness should be chained up securely."

By Their Deeds Ye Shall Know Them.—Defendant: The things the prosecutor don't know about driving a car, Your Worship, would fill a book.

The Bench: And it seems to me, young man, the things you don't know about it would fill a hospital.—*Exchange.*

Absent Minded.—The mill foreman came upon two darkies walking slowly up the road, single file.

"Say, you, why ain't you worthless niggers working?"

"We'se working, boss, sho' nuff. We'se carrying this plank up to the mill."

"What plank? I don't see any plank."

"Well, fo' de lawd's sake, Abe! Ef we ain't gone an' forgot de plank!"—*Exchange.*

Well Trained.—Lawyer—The cross-examination did not seem to worry you much. Have you had previous experience?

Client—Six children.—*Stray Stories.*

Padlocked.—The prison visitor was going round the cells, and was asking rather fatuous questions. "Was it your love of drink that brought you here?" she asked a prisoner.

"Lor' no miss," replied the man, "you can't get nothin' here!"—*Bystander.*

Egg Money.—A farmer's wife went into the bank to make a deposit for the Ladies Aid, of which she was president. As she placed a goodly sum at the window, she said, "Here is the Aid money."

The slightly deaf cashier, understanding the depositor to say "egg money," replied: "Well, well! The old hens did well this week, didn't they?"—*Exchange.*

Where It Belonged.—Judge (to amateur yegg)—"So they caught you with

this bundle of silverware. Whom did you plunder?"

Yegg—"Two fraternity-houses, Your Honor."

Judge (to Sergeant)—"Call up the downtown hotels and distribute this stuff."—*Washington Evening Star.*

Welcome.—Debt-Collector—"Shall I call to-morrow?"

Young Lawyer—"Twice, if convenient! I have an idea that folks think you are a client."—*Answers* (*London*).

People Are Too Suspicious.—Judge—"How could you swindle people who trusted in you?"

Prisoner—"But, judge, people who don't trust you cannot be swindled."—*Toronto Globe.*

Japanese Mother's Letter to Lawyer for Insurance Company.—Dear Mr. Corwin P. Shank: I am mother of Mikihiko Hirata in Auburn, Wash. Thank you very much for your kindness, I am regret that I can not write good English sentence, then please read this with your judgment. Doctor say that "Mikihiko is all right." But I don't think so, Of course his external injuries recovered, but he became to feel painful at his front and back head where he hit with concrete and automobile since about 3 weeks ago. And he can not only sleep soundly, but some time he talk to me some strangeness (suspiciousness) in the night, (but this is not in his dream). I and my husband are very anxious that he may become a foolish boy in future. Because, there are a great many of examples. I received the letter from my elder sister in Japan, she wrote that "If there is no Doctor who can guarantee Mikihiko's future, You bring him back to Japan. Because there is a very very famous and skilful Doctor in Beppu Hot Spring Hospital, a great many of people who get injured internal head, recovered completely by take care of this Doctor. But it cost about *Yen* 2000.00 one year as accommodation charge in that Hot Spring Hospital, because you must enter the Hospital with Mikihiko, for he is too young. This is too much money, but I think this is Parents duty to do so. I wrote to you this letter after consultation with all our relation."

This is the letter which sent to me from

my elder sister. I and my husband want to discharge our last and best duties to Mikihiko on this unfortunate accident, as his parent, in obedience to our all relation's advice. Mr. C. P. Shank: These 4.5 years are pretty hard time for all Japanese farmers, as a result of this fact, we manage hardly to live to mouth from hand. So, this $600.00 (Japanese *Yen* 2000.00 is $600.00) is too much for me. Please take a just view of this fact, and I wish your kind support for me. Of course, I bear in my mind Company's kindness. Mr. Shank: The Parent and Teacher's Asso. of this Japanese school meeting will held every month, and Mother's meeting will held every other month. My husband never lose these chance, he is sure to engage in canvassing for insurance with confidence. And I am sure to requite for Company's friendship, and to you too. Mr. Shank: This year, 39 children attended in this school this new term (April 1st) this prove that "all parents believe my husband," because, before, 8, or 10, or 15 children entered school at new term only. Then, I am sure that my husband will requite for Company's kindness by engage in canvassing for insurance. I wish your best kindness for my family please. I and my husband pray for Company's and your happiness.

Your's truly—

Contributor: Corwin P. Shank,
Seattle, Wash.

Story.—The writer was defending a man charged with Transporting Liquor, before a jury in a Country Justice' Court. It was soon after our Bone Dry Law had been passed by the Arkansas legislature, and our Supreme Court had just the Monday morning before passed on the Statute in question, and the opinion came out in our Advance Sheets. I read to the jury this opinion. After I had begun to read from the opinion, the Justice said:

"Wait a minute, what's that you are reading?"

I explained to him that it was the opinion of our Supreme Court, on the particular statute under which the defendant was being tried. He says "Well, now, that dont go in my Court. The State furnishes me with the Digest to go by and that is the law in this Court." I said. "Your Honor, that is the law as handed down by our Supreme Court, the first case construing this statute. I will leave it to the Prosecuting Attorney here if that isn't right." I handed the Reporter to the Prosecuting Attorney, and he looked it over, turned it over a time or too, and slowly and with a droll says:

"Well, now, your honor, I don't know what that is. Looks like an ordinary magazine he has subscribed for. It has advertisements on the back of it, and says 'Subscription price $10.00 per year.' Don't look like a law book to me."

The result was, the Court wouldn't let me read it to the Jury, and very promptly convicted my client. I appealed however and the case was thrown out of Court.

On our way back home (we rode together) the prosecutor said: "Is it true that it is the Supreme Court Opinion"?

I told him it was, and he says: "Well, Now, I want to beg your pardon. I just didn't know, I am sorry."

Contributor: Oscar C. Blackford,
Walnut Ridge, Ark.

Would That It Were True.—A Judge, in writing an opinion, was gently admonishing an attorney at the bar for some minor infraction of the Court Rules. After stating in detail the error made by the attorney the Judge dictated—"A word to the wise is all sufficient."

The Secretary, in transcribing the notes, wrote into the opinion—"A word to the *wife* is all sufficient" and the error was not detected and the opinion was filed.

The attorney, writing to the Judge, thanked him for calling his attention to the matter and stated that if he could put into practice "A word to the wife is all sufficient" he would be one of the most popular jurists of the State and his re-election until doomsday would be assured.

Contributor: Alice Kerns Katrobos.
Media, Pa.

Choice.—Law Clerk: "I have cast these figures eight times, sir."

"Very good and thorough."

"Here are the eight results."

—*Il Travasco* (*Rome*).

Doddering.—Lawyer—"Then your husband, I take it, is elderly?"

Client—"Elderly? Why, he's so old he gets winded playing chess."

—*The Humorist* (*London*).

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